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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 FORTUNE GROWERS, LLC, a Nevada) Case No.: 07cv2088-JAH
11 limited liability company,)
12)
12 Plaintiff,) **ORDER GRANTING PLAINTIFF'S**
13) **MOTION FOR DEFAULT**
13 vs.) **JUDGMENT**
14)
15 SOUTHERN CITRUS, INC., et al.,)
16)
16 Defendants.)
17 _____)

18 On April 7, 2008, this Court held a hearing on Plaintiff's Motion for Default Judgment.
19 Counsel for the Plaintiff appeared telephonically. Defendants failed to appear, despite having
20 been properly served with notice of this hearing. For the reasons orally stated by the Court on
21 the record and based upon the following, this Court **GRANTS** Plaintiff's motion.

22 **BACKGROUND**

23 On November 14, 2007, Plaintiff Fortune Growers, Inc. ("Plaintiff") filed a first
24 amended complaint (FAC) against Defendants Southern Citrus, Inc., Hana Gibo, Sabah
25 Youkhanna and Broadway Farmers Market, Inc. (collectively "Defendants") alleging various
26 violations of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. § 499a, et seq.,
27 as well as common law offenses in connection with the sale of certain produce. See Doc. No.
28 17. On December 2, 2007, Plaintiff served Defendants, Southern Citrus, Hana Gibo, and

1 Broadway Farmers Market, with summonses and the FAC by personal service. See Doc. Nos.
2 19, 20 and 21. Plaintiff also attempted to serve Defendant Youkhanna by personal service, but
3 was unsuccessful. Plaintiff then petitioned the Court to allow Plaintiff to serve Youkhanna by
4 publication. Doc. No. 22. This Court granted Plaintiff's request. Doc. No. 23. On January
5 11, 2008, Plaintiff filed an affidavit demonstrating that Plaintiff served Defendant Youkhanna
6 by publication. Doc. No. 24.

7 All Defendants have failed to plead or otherwise defend against the action as required
8 by the summons and provided by the Federal Rules of Civil Procedure. On January 24, 2008,
9 Plaintiff filed a Motion for Clerk's Entry of Default as to all Defendants, see Doc. No. 25, and
10 the clerk entered default on January 28, 2008. See Doc. No. 26. The instant motion for entry
11 of default judgment by the court was filed on February 12, 2008. Doc. No. 30. No opposition
12 has been received.

13 LEGAL STANDARD

14 Rule 55(b) of the Federal Rules of Civil Procedure provides that default judgment may
15 be entered by the Clerk of Court if the amount sought is "for a sum certain or for a sum which
16 can by computation be made certain." Fed. R. Civ. P. 55(b)(1). In all other cases, the
17 application must be made to the court. Fed. R. Civ. P. 55(b)(2). "If, in order to enter
18 judgment or to carry it into effect, it is necessary to take an account or to determine the amount
19 of damages . . . , the court may conduct such hearings or order such references as it deems
20 necessary and proper." Id. No judgment by default may be entered against "an infant or
21 incompetent person." Fed. R. Civ. P. 55(b)(2). In addition, particular procedures must be
22 followed before default judgment is entered against military personnel. 50 U.S.C. Appendix
23 § 521.

24 A defendant's default does not automatically entitle the plaintiff to a court-ordered
25 judgment. See Draper v. Coombs, 792 F.2d 915, 924-25 (9th Cir. 1986). Rather, granting or
26 denying relief is entirely within the court's discretion. See id. For relief to be granted, the
27 plaintiff is required to state a claim and provide proof of all damages sought in the complaint.
28 See Eitel v. McCool, 782 F.2d 1470 (9th Cir. 1986). The Federal Rules of Civil Procedure also
provide that "[a] judgment by default shall not be different in kind or exceed in amount that

1 prayed for in the [complaint].” Fed. R. Civ. P. 54(c).

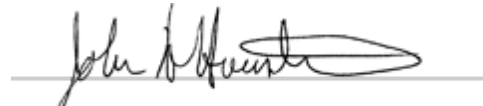
2 **DISCUSSION**

3 At the hearing on this matter on April 7, 2008, Plaintiff requested that its motion for
4 default judgment be granted pursuant to Fed. R. Civ. P. 55(b). Plaintiff submitted a declaration
5 by Attorney Steven M. De Falco in support of the motion for default judgment. The
6 declaration attests to the debt owed to Plaintiff under PACA as set forth in the FAC and the
7 costs, fees and interests due Plaintiff. Plaintiff has proven damages in the principal amount of
8 \$115,266.40. Plaintiff also seeks taxable costs in the sum of \$1,815.00, pre-judgment interest
9 in the sum of \$4,165.66, and attorneys’ fees equaling \$9,306.00, all of which qualify for
10 protection under PACA. The total amount of Plaintiff’s request is \$130,553.06.

11 Defendants did not appear at the hearing or present a reasonable excuse for failing to
12 defend this action. Accordingly, **IT IS HEREBY ORDERED:**

- 13 1. Fortune Growers, LLC’s Motion for Default Judgment is **GRANTED**.
- 14 2. Judgment is entered in favor of Fortune Growers, LLC and against Defendants
15 Southern Citrus, Inc., Hana Gibo, Sabah Youkhanna, and Broadway Farmers
16 Market, Inc., jointly and severally, in the principal amount of \$115,266.40, along
17 with taxable costs in the sum of \$1,815.00, pre-judgment interest in the sum of
18 \$4,165.66, and attorneys’ fees equaling \$9,306.00 for a total judgment amount
19 of \$130,553.06.
- 20 3. Post-judgment interest shall accrue on the above individual amounts at the
21 current post-judgment rate per annum pursuant to 28 U.S.C. §1961 from the date
22 of the entry of this Judgment until paid in full.

23 DATED: April 9, 2008

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26 JOHN A. HOUSTON
27 United States District Judge
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